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1 entitled to restoration of their monies.

2

3 **FIFTH CLAIM FOR RELIEF**
4 **[Breach Of Express Warranty]**

5 63. Plaintiff hereby realleges and incorporates by reference all paragraphs
6 previously alleged herein. Plaintiff asserts this claim against each and every
7 Defendant on behalf of herself and the Class.

8 64. Defendants expressly warranted that their "cuts and gravy" style pet food
9 was suitable and safe for pet consumption.

10 65. Defendants also expressly warranted that "it manufacturer[s] the private-
11 label wet pet-food industry's most comprehensive product program with the highest
standards of quality."

12 66. Plaintiff and the Class were induced by Defendants' marketing,
13 advertising, promotion and labeling of the pet food as suitable "food" to rely upon
14 such express warranty, and, in fact, relied upon the untrue warranty in purchasing
15 the recalled pet food and feeding it to their pets.

16 67. Plaintiff and the Class were damaged as a proximate result of
17 Defendants' breach of their express warranty.

18 **SIXTH CLAIM FOR RELIEF**
19 **[Breach Of Implied Warranty]**

20 68. Plaintiff hereby realleges and incorporates by reference all paragraphs
21 previously alleged herein. Plaintiff asserts this claim against each and every
22 Defendant on behalf of herself and the Class.

23 69. Defendants are merchants under section 2-104 and 2-314 of the Uniform
24 Commercial Code.

25 70. Through their marketing, advertising, promotion and labeling of their
26 "cuts and gravy" style pet food, Defendants impliedly warranted that such pet food
27 was fit for the ordinary purpose for which it was intended, including to safely
28 nourish pets with risk of illness or death, pursuant to section 2-314 of the Uniform

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1 Commercial Code.

2 71. Through their marketing, advertising, promotion and labeling,
3 Defendants knew that Plaintiff and the Class would purchase their pet food for the
4 ordinary purpose of providing nourishment to their pets.

5 72. Defendants manufactured, distributed, marketed, advertised, promoted
6 and sole their pet food for the ordinary purpose for which it was purchased by
7 Plaintiff and the Class.

8 73. Plaintiff and the Class relied upon Defendants' representations and
9 warranties, and purchased and used Defendants' pet food for the ordinary purpose
10 for which it was sold.

11 74. Defendants' pet food purchased by Plaintiff and the Class were unfit for
12 their ordinary purpose when sold. Such food was sold while presenting a risk of
13 risk of illness or death to pets. Defendants have accordingly breached the implied
14 warranty of merchantability by selling such unfit pet food.

15 75. Plaintiff and the Class were damaged as a proximate result of
16 Defendants' breach of warranty.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, on behalf of herself and all others similarly
19 situated, prays for judgment against Defendants as follows:

- 20 1. For an order certifying the Class under Rule 23 of the Federal Rules of
21 Civil Procedure and appointing Plaintiff and her counsel of record to
22 represent the Class;
- 23 2. For restitution, disgorgement and/or other equitable relief as the Court
24 deems proper;
- 25 3. That pursuant to sections 17203 and 17204 of the Business and
26 Professions Code, Defendants be permanently enjoined from
27 performing or proposing to perform any of the aforementioned acts of
28 unfair, unlawful and fraudulent business practices;

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JURY DEMAND

To the full extent available, Plaintiff demands a trial by jury.

Dated: March 24, 2007

WEXLER TORISEVA WALLACE LLP

By 
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